

## § 228.106

### § 228.106 Operator's submission of surface use plan of operations.

(a) *General.* No permit to drill on a Federal oil and gas lease for National Forest System lands may be granted without the analysis and approval of a surface use plan of operations covering proposed surface disturbing activities. An operator must obtain an approved surface use plan of operations before conducting operations that will cause surface disturbance. The operator shall submit a proposed surface use plan of operations as part of an Application for a Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed plan of operations is submitted.

(b) *Preparation of plan.* In preparing a surface use plan of operations, the operator is encouraged to contact the local Forest Service office to make use of such information as is available from the Forest Service concerning surface resources and uses, environmental considerations, and local reclamation procedures.

(c) *Content of plan.* The type, size, and intensity of the proposed operations and the sensitivity of the surface resources that will be affected by the proposed operations determine the level of detail and the amount of information which the operator includes in a proposed plan of operations. However, any surface use plan of operations submitted by an operator shall contain the information specified by the Onshore Oil and Gas Order in effect when the surface use plan of operations is submitted.

(d) *Supplemental plan.* An operator must obtain an approved supplemental surface use plan of operations before conducting any surface disturbing operations that are not authorized by a current approved surface use plan of operations. The operator shall submit a proposed supplemental surface use plan of operations to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed supplemental plan of operations is submitted. The supplemental

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plan of operations need only address those operations that differ from the operations authorized by the current approved surface use plan of operations. A supplemental plan is otherwise subject to the same requirements under this subpart as an initial surface use plan of operations.

### § 228.107 Review of surface use plan of operations.

(a) *Review.* The authorized Forest officer shall review a surface use plan of operations as promptly as practicable given the nature and scope of the proposed plan. As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR parts 1500–1508, and the Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15 and shall ensure that:

(1) The surface use plan of operations is consistent with the lease, including the lease stipulations, and applicable Federal laws;

(2) To the extent consistent with the rights conveyed by the lease, the surface use plan of operations is consistent with, or is modified to be consistent with, the applicable current approved forest land and resource management plan;

(3) The surface use plan of operations meets or exceeds the surface use requirements of § 228.108 of this subpart; and

(4) The surface use plan of operations is acceptable, or is modified to be acceptable, to the authorized Forest officer based upon a review of the environmental consequences of the operations.

(b) *Decision.* The authorized Forest officer shall make a decision on the approval of a surface use plan of operations as follows:

(1) If the authorized Forest officer will not be able to make a decision on the proposed plan within 3 working days after the conclusion of the 30-day notice period provided for by 30 U.S.C. 226(f), the authorized Forest officer shall advise the appropriate Bureau of Land Management office and the operator as soon as such delay becomes apparent, either in writing or orally with

subsequent written confirmation, that additional time will be needed to process the plan. The authorized Forest officer shall explain the reason why additional time is needed and project the date by which a decision on the plan will likely be made.

(2) When the review of a surface use plan of operations has been completed, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, that:

- (i) The plan is approved as submitted;
- (ii) The plan is approved subject to specified conditions; or,
- (iii) The plan is disapproved for the reasons stated.

(c) *Public notice.* The authorized Forest Service officer will give public notice of the decision regarding a surface use plan of operations and include in that notice whether the decision is appealable under the applicable Forest Service appeal procedures.

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on a surface use plan of operations to the appropriate Bureau of Land Management office and the operator. This transmittal shall include the estimated cost of reclamation and restoration (§ 228.109(a)) if the authorized Forest officer believes that additional bonding is required.

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.106(d)) shall be reviewed in the same manner as an initial surface use plan of operations.

[55 FR 10444, Mar. 21, 1990, as amended at 72 FR 10328, Mar. 7, 2007]

#### § 228.108 Surface use requirements.

(a) *General.* The operator shall conduct operations on a leasehold on National Forest System lands in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface resource disturbance, and that is in compliance with the other requirements of this section.

(b) *Notice of operations.* The operator must notify the authorized Forest officer 48 hours prior to commencing operations or resuming operations following their temporary cessation (§ 228.111).

(c) *Access facilities.* The operator shall construct and maintain access facilities to assure adequate drainage and to minimize or prevent damage to surface resources.

(d) *Cultural and historical resources.* The operator shall report findings of cultural and historical resources to the authorized Forest officer immediately and, except as otherwise authorized in an approved surface use plan of operations, protect such resources.

(e) *Fire prevention and control.* To the extent practicable, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from the operations.

(f) *Fisheries, wildlife and plant habitat.* The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect fisheries, wildlife, and plant habitat.

(g) *Reclamation.* (1) Unless otherwise provided in an approved surface use plan of operations, the operator shall conduct reclamation concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is approved in writing by the authorized Forest officer.

(3) The operator must:

- (i) Control soil erosion and landslides;
- (ii) Control water runoff;
- (iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;
- (iv) Reshape and revegetate disturbed areas;
- (v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and
- (vi) Take such other reclamation measures as specified in the approved surface use plan of operations.

(h) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and